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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,850	07/21/2003	Joseph Davids	080405-000000US	6554

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/624,850

Applicant(s)

DAVIDS, JOSEPH

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. 2003/0024163 to Sasuga in view of U.S. Patent No. 5,458,662 to Toyone and U.S. Patent No. 1,828,448 to Seidel.

Regarding Claims 1 and 6, Sasuga teaches an hydroponic container apparatus for growing plants therein, the apparatus comprising a block (Sasuga #8) placed in a container (Sasuga #14 and 16), the container having sides and base and an open top (Sasuga Fig. 2), the container being adapted to be folded (Sasuga #22) and sealed such that the container acts as packaging for the block, the sides of the container being folded and secured over the top of the block, wherein the container when it is ready for use is adapted to be unsealed and unfolded such that the dehydrated block is able to be re-hydrated and readied for use as a hydroponic medium whilst still in the container.

Sasuga teaches a soilless growing medium (Sasuga page 3 paragraph [0030]), but is silent on explicitly stating coir fibers. However, Toyone teaches a soilless growing medium composed of coir fibers (Toyone abstract). It would have been obvious to one of ordinary skill in the art to modify the teachings of Sasuga with teachings of Toyone at the time of the invention with the coir fibers since the modification is merely the

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selection of a known alternate equivalent hydroponic material to perform the same intended function selected to meet an engineering design choice such as cost or the drainage properties of coir taught by Toyone.

Sasuga as modified by Toyone inherently teaches that the block of dehydrated coir fibers upon rehydration expands upwardly within the container. Toyone teaches that the fibers are compressed and prior to use the soilless medium of Sasuga is in a dehydrated state. Upon hydration of the coir medium of Toyone the fibers will swell and expand (Toyone Col. 3 line 1-14). Compressed fibers when exposed to water will inherently expand. (Just for reference the examiner refers applicant to the English abstract of French Patent FR 2732948).

Sasuga as modified is silent on the drain in the base. However, Seidel teaches a plant container with a drain hole (Seidel #13). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention with the old and notoriously well-known drainage hole means to promote healthy root development.

Regarding Claims 2 and 3, Sasuga as modified teaches the container is made from impervious plastic material (Sasuga page 2 paragraph [0023] last sentence).

Regarding Claim 4, Sasuga as modified teaches block of dehydrated coir material is rectangular in form (Sasuga #8).

Regarding Claim 5, Sasuga as modified teaches the apparatus is used for more than one plant (Sasuga #6).

Claims 1 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,224,295 to Izzard in view of U.S. Patent No. 1,828,448 to Seidel and PCT WO 03/004379A1 to De Vesci.

Regarding Claims 1 and 6, Izzard teaches an hydroponic container apparatus for growing plants therein, the apparatus comprising a block (Izzard #4) placed in a container, the container (Izzard # 2) having sides and base and an open top, the container being adapted to be folded (Izzard #20) and sealed such that the container acts as packaging for the block, the sides of the container being folded and secured over the top of the block, wherein the container when it is ready for use is adapted to be unsealed and unfolded such that the dehydrated block is able to be re-hydrated and readied for use as a hydroponic medium whilst still in the container.

Izzard is silent on the drain hole means. However, Seidel teaches a plant container with a drain hole (Seidel #13). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention with the old and notoriously well-known drainage hole means to promote healthy root development.

Izzard as modified teaches the block is a peat, but is silent on explicitly teaching coir fibers. However, De Vesci teaches that peat and coir fibers are alternate equivalent growing mediums (De Vesci page 1 line 10-14). It would have been obvious to one of ordinary skill in the art to modify the teachings of Izzard with the teachings of DeVesci since the modification is merely the selection of a known alternate equivalent growing medium selected for desired drainage properties.

Izzard as modified by De Vesci teaches that the coir is compressed coir (De Vesci page 1 line 22) that will inherently expand upon re-hydration.

Regarding Claim 4, Izzard as modified is silent on the block of dehydrated coir material is rectangular in form. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a change in shape for a desire aesthetic appeal to perform the same intended function and does not present a patentably distinct limitation.

Regarding Claim 5, Izzard as modified teaches the apparatus is used for more than one plant (Izzard Col. 1 line 48).

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,224,295 to Izzard as applied to claim 1 above, and further in view of U.S. Patent Pub. No. 2003/0024163 to Sasuga.

Regarding Claims 2 and 3, Izzard as modified is silent on the container is made from impervious plastic material. However, Sasuga teaches a container made of plastic (Sasuga #12). It would have been obvious to one of ordinary skill in the art to modify the teachings of Izzard with the teaching of Sasuga at the time of the invention since the modification is merely the selection of a known material for intended use to and provide more light to the growing plant once planted and does not present a patentably distinct limitation.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,971,160 to Vajtay in view of U.S. Patent No. 1,828,448 to Seidel and U.S. Patent No. 5,458,662 to Toyone.

Regarding Claims 1 and 6, Vajtay teaches an hydroponic container apparatus for growing plants therein, the apparatus comprising a block (Vajtay Fig. 1) placed in a container, the container (Vajtay # 20, 22, 12, and 40) having sides and base and an open top, the container being adapted to be folded (Vajtay Fig. 2 and 3) and sealed such that the container acts as packaging for the block, the sides of the container being folded and secured over the top of the block (Vajtay #40), wherein the container when it is ready for use is adapted to be unsealed and unfolded such that the dehydrated block of coir fibers is able to be re-hydrated and readied for use as a hydroponic medium whilst still in the container (Vajtay Col. 2 line 33-35).

Vajtay is silent on the drain hole means. However, Seidel teaches a plant container with a drain hole (Seidel #13). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention with the old and notoriously well-known drainage hole means to promote healthy root development.

Vajtay teaches an organic pellet (Vajtay #14), but is silent on explicitly stating coir fibers. However, Toyone teaches a soilless/organic growing medium composed of coir fibers (Toyone abstract). It would have been obvious to one of ordinary skill in the art to modify the teachings of Vajtay with teachings of Toyone at the time of the invention with the coir fibers since the modification is merely the selection of a known alternate equivalent hydroponic/organic material to perform the same intended function selected

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to met and engineering design choice such as cost or the drainage properties of coir taught by Toyone.

Vajtay teaches that the soiless medium is shipped in a dehydrated state (Vajtay Col. 2 line 33-35) and Vajtay as modified by Toyone inherently teaches that the dehydrated block of fibers expands upon hydration (Vajtay Col. 3 line 20-22). Upon hydration of the coir medium of Toyone the fibers will swell and expand (Toyone Col. 3 line 1-14). Compressed fibers when exposed to water will inherently expand. (Just for reference the examiner refers applicant to the English abstract of French Patent FR 2732948).

Regarding Claims 2 and 3, Vajtay as modified teaches the container is made from impervious plastic material (Vajtay Col. 2 line 56).

Regarding Claim 4, Vajtay as modified is silent on the block of dehydrated coir material is rectangular in form. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a change in shape for a desire aesthetic appeal to perform the same intended function and does not present a patentably distinct limitation.

Regarding Claim 5, Vajtay as modified teaches the apparatus is used for more than one plant (Vajtay Fig. 3).

Response to Arguments

Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the cited prior art does not teach that the container having a block of dehydrated coir fibers, wherein the block abuts against the interior of the container. However, applicant has not claimed this limitation. Applicant has merely claimed that the block of dehydrated block of coir fibers upon rehydration expands upwardly within the container towards the top. No where in the claim language has applicant claimed that the coir fibers **abut** the interior of the container.

Examiner maintains that Sasuga teaches the steps claimed by applicant in claim 6. Sasuga as modified by Toyone and Seidel teach the selection of coir fibers as the dehydrated soilless medium and a drain hole in the base. Sasuga alone teaches a base with sides and an open top (Sasuga #16) and folding the sides (Sasuga #22) to close the top (Sasuga Fig. 3) and inherently later opening the top to rehydrate the plant. The top is going to be opened and closed on multiple occasions to supply water to the medium to promote plant growth.

Examiner maintains that Izzard teaches the steps claimed by applicant in claim 6. Izzard as modified by De Vesci and Seidel teaches the selection of coir fibers as the dehydrated soilless medium and a drain hole in the base. Izzard alone teaches a base and sides with an open top (Izzard Fig. 1 #2 and 20), folding sides to close the top (Izzard Fig. 1 #20) for shipping and inherently later opening the top to rehydrate the medium for planting (Izzard Col. 2 line 59-60).

Examiner maintains that Vajtay teaches the steps claimed by applicant in claim 6. Vajtay as modified by Toyone and Seidel teaches the selection of coir fibers as the dehydrated soilless medium and a drain hole in the base. Vajtay alone teaches a base

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and sides with an open top (Vajtay Fig. 1 #20, 22), folding sides to close the top (Vajtay Fig. 1) for shipping and inherently later opening the top to rehydrate the medium for planting (Vajtay Col. 2 line 33-35).

Examiner would further like to illustrate that it is old and notoriously well-known in the art of hydroponics to ship and store the fiber soiless medium in a compressed dehydrated state that upon hydration will expand, by further referencing the teachings of Patton in U.S. Patent No. 4,124,953 Fig. 4 and 5.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-

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3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

16 November 2004



Peter M. Poon
Supervisory Patent Examiner
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